was tendered on the 30th of September 1950. The respondent contended and the learned Magistrate held that by, consistently accepting the rent in arrears, the landlord had consented in a variation of the agreement — that a new contract had come into existence between the parties as regards the time of payment.

Held, that when an act has been done periodically, the fact that it has been done irregularly in the past does not, unless the variation of the agreement can be inferred, justify the assumption that the irregularity will be waived in future and in all cases such as the present one, the existence of a novated agreement can only be established upon proof which goes higher and beyond mere indulgence on the part of the landlord.

Case referred to :—

(1) *Bird v. Hildage* (1947) 2 All E.R. 7; (1948) 1 K.B. 91.

APPEAL from the Magistrate's Court, Jasin.

Goh Tiow Wan for the appellant.

C. S. Jayaswal for the respondent.

Cur. Adv. Vult.

Abbott, J. : — The appellant is the owner of certain premises which were let to the respondent on a monthly tenancy at a rent of $38 a month payable in arrear. In the lower court the appellant claimed possession of the premises on the ground that the respondent was in arrear with the rent for the month of August last — beyond the fourteen-day-period allowed by the proviso to section 12 of the Control of Rent Ordinance, No. 6 of 1948. The rent for August was, in fact, tendered on the 30th of September. The respondent was already a tenant of the premises when the appellant acquired them in June 1948 and thereafter the appellant consistently allowed the rent to be paid two months in arrears each monh. The learned Magistrate, in giving judgment in favour of the respondent, held that, by consistently accepting the rent in arrear, had consented in a variation of the agreement — that a new contract had come into existence between the parties as regards the time of payment. There was no evidence to show otherwise than that such acceptance was by way of indulgence and the decision of this court must be given in the light of decision in *Bird v. Hildage*[1]. In all cases such as the present one, the existence of a novated agreement can only be established upon proof which goes higher and beyond mere indulgence on the part of the landlord. The appeal must be allowed.

Appeal allowed.

PUBLIC PROSECUTOR v. YONG AH PEONG AND 15 ORS.

[App. Crim. Juris. (Abbott, J.) May 23, 1951]

Emergency Regulations, 1948, regulation 7 — Curfew — Persons found within doors of non-residential premises or premises where residential accommodation not normally provided — "Within doors" — "Shall remain within doors" — Construction of — Burden of proof. of.

In any case where a person is found by night in a curfew area outside his own doors and in premises wherein guest accommodation is not normally provided there is a burden upon that person to prove that he intended and had been permitted to pass the night there.

CASE STATED by the Magistrate of Malacca for the opinion of the High Court.

The facts appear sufficiently from the judgment.

Abbott, J. : — This is a case stated by the Magistrate of Malacca for the opinion of the High Court. The facts shortly are as follows. The residents of Jasin are under curfew between the hours of 7 p.m. and 5.30 a.m. by virtue of an order made in that behalf under the authority of regulation 7 of the Emergency Regulations, 1948. The regulation, read in conjunction with the order, requires that every person affected by the order "shall remain within doors" between the specified hours. During the night of the 15th of May last sixteen persons (the Accused) were found playing cards in a coffee shop; they were prosecuted before the Magistrate with having broken curfew and acquitted on the ground that they were, in fact, "within doors" notwithstanding that the doors were not their own. In the view of this Court the case was not correctly decided — the expression "shall remain within

doors" was construed in too narrow a sense. The manifest purpose of this regulation is to require every person affected by an order to remain within the hours which he normally occupies or within other residential or quasi-residential premises which, by invitation or licence, he may casually use for the purpose of passing the night. In the present case there is nothing upon the record to show that the accused had been invited or licensed to pass the night in the coffee shop or that they intended to do so. In any case where a person is found by night in a curfew area outside his own doors and in premises wherein guest accommodation is not normally provided there is a burden upon that person to prove that he intended and had been permitted to pass the night there.

This statement of the law, as the Court sees it to be, is declaratory and therefore no order is made upon the case.

No Order.